

## STATEMENT OF EMERGENCY

907 KAR 12:020E

(1) This is an emergency administrative regulation to reinstate certain payments for Supports for Community Living services for individuals with an intellectual or developmental disability. The Department for Medicaid Services is amending this administrative regulation to insure the safe and effective transition of enhanced services to enable individuals with an intellectual or developmental disability to live within the least restrictive environment as possible. This regulation will allow providers who are in the process of pursuing increased credentials to continue to serve these individuals in a congregate setting.

(2) This administrative regulation is being implemented on an emergency basis in order to maintain the necessary rate structure for adult day care services for the safety of individuals receiving these services while new and more individualized services are developed and delivered.

(3) This emergency administrative regulation will not be replaced by an ordinary administrative regulation as the change is only needed for a limited amount of time.

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Steven L. Beshear  
Governor

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Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (Emergency Amendment)

5 907 KAR 12:020E. Reimbursement for new Supports for Community Living waiver  
6 services.

7 RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a,  
8 b, d, n

9 STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3),  
10 205.6317

11 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family  
12 Services, Department for Medicaid Services, is required to administer the Medicaid  
13 Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to com-  
14 ply with any requirement that may be imposed, or opportunity presented, by federal law  
15 to qualify for federal Medicaid funds. This administrative regulation establishes the re-  
16 imbursement policies for SCL waiver services provided to individuals pursuant to the  
17 new Supports for Community Living (SCL) waiver program established by 907 KAR  
18 12:010 rather than the program established pursuant to 907 KAR 1:145.

19 Section 1. Definitions. (1) "Allocation" means the dollar amount designated to meet a  
20 participant's identified needs.

21 (2) "DBHDID" means the Department for Behavioral Health, Developmental and

1 Intellectual Disabilities.

2 (3) "Department" means the Department for Medicaid Services or its designee.

3 (4) "Developmental disability" means a disability that:

4 (a) Is manifested prior to the age of twenty-two (22);

5 (b) Constitutes a substantial disability to the affected individual; and

6 (c) Is attributable either to an intellectual disability or a condition related to an intel-  
7 lectual disability that:

8 1. Results in an impairment of general intellectual functioning and adaptive behavior  
9 similar to that of a person with an intellectual disability; and

10 2. Is a direct result of, or is influenced by, the person's cognitive deficits.

11 (5) "Exceptional support" means a service:

12 (a) Requested by a participant and the participant's team; and

13 (b) That due to an extraordinary circumstance related to a participant's physical  
14 health, psychiatric issue, or behavioral health issue is necessary to:

15 1. Be provided in excess of the upper payment limit for the service for a specified  
16 amount of time; and

17 2. Meet the assessed needs of the participant.

18 (6) "Immediate family member" is defined by KRS 205.8451(3).

19 (7) "Intellectual disability" or "ID" means:

20 (a) A demonstration:

21 1. Of significantly sub-average intellectual functioning and an intelligence quotient  
22 (IQ) of approximately seventy (70) or below; and

23 2. Of concurrent deficits or impairments in present adaptive functioning in at least

two (2) of the following areas:

- a. Communication;
- b. Self-care;
- c. Home living;
- d. Social or interpersonal skills;
- e. Use of community resources;
- f. Self-direction;
- g. Functional academic skills;
- h. Work;
- i. Leisure; or
- j. Health and safety; and

(b) An intellectual disability that had an onset before eighteen (18) years of age.

(8) "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:

(a) A parent (biological, adoptive, or foster) of a minor child who provides care to the child;

(b) The guardian of a minor child who provides care to the child; or

(c) A spouse of a participant.

(9) "Participant" means a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for an individual with an intellectual disability as established in 907 KAR 1:022;

(b) Is authorized by the department to receive SCL waiver services; and

(c) Utilizes SCL waiver services and supports in accordance with a person centered

1 plan of care.

2 (10) "Participant directed service" means an option to receive a service which is  
3 based on the principles of self-determination and person-centered thinking.

4 (11) "POC" means Plan of Care.

5 (12) "State plan" is defined by 42 C.F.R. 430.10.

6 (13) "Supports for community living services" or "SCL services" means community-  
7 based waiver services for a participant who has an intellectual or developmental disabil-  
8 ity.

9 Section 2. Coverage. (1) The department shall reimburse a participating SCL provid-  
10 er for a covered service provided to a participant.

11 (2) In order to be reimbursable by the department, a service shall be:

12 (a) Provided in accordance with the terms and conditions specified in 907 KAR  
13 12:010; and

14 (b) Prior authorized by the department.

15 (3)(a) The reimbursement provisions established in this administrative regulation  
16 shall apply after a recipient transitions to the new SCL waiver program established in  
17 907 KAR 12:010.

18 (b) Prior to that transition, the services provided pursuant to 907 KAR 1:145 shall be  
19 reimbursed pursuant to 907 KAR 1:155.

20 (c) Funding for the SCL waiver program shall be associated with and generated  
21 through SCL waiver program participants rather than SCL waiver service providers.

22 Section 3. SCL Reimbursement and Limits. (1) Except as established in Section 4 of  
23 this administrative regulation, the department shall reimburse for an SCL service pro-

vided in accordance with 907 KAR 12:010 to a participant:

(a) The amount of the charge billed by the provider; and

(b) Not to exceed the fixed upper payment limit for the service.

(2) The upper payment limits listed in the following table shall be the upper payment limits for the corresponding services listed in the following table:

| Service   | Unit of Service | Upper Payment Limit |
|---|-----------------|---------------------|
| Case Management   | 1 month         | \$320.00            |
| Community Access-Individual   | 15 minutes      | \$8.00              |
| Community Access-Group  | 15 minutes      | \$4.00              |
| Community Guide   | 15 minutes      | \$8.00              |
| Consultative, Clinical and Therapeutic                                      | 15 minutes      | \$22.50             |
| Day Training through <u>June 30, 2014</u> <del>[December 31, 2013]</del>    | 15 minutes      | \$2.50              |
| Day Training effective <u>Ju-</u><br><u>ly</u> <del>[January]</del> 1, 2014 | 15 minutes      | \$2.20              |
| Day Training (Licensed Adult Day Health Center)                             | 15 minutes      | \$3.00              |
| Occupational therapy by occupational therapist                              | 15 minutes      | \$22.17             |
| Occupational therapy by certified occupational therapy assistant            | 15 minutes      | \$16.63             |

|   |                                  |          |
|---|----------------------------------|----------|
| Physical therapy by physical therapist                  | 15 minutes                       | \$22.17  |
| Physical therapy by physical therapy assistant          | 15 minutes                       | \$16.63  |
| Person Centered Coach                                   | 15 minutes                       | \$5.75   |
| Personal Assistance                                     | 15 minutes                       | \$5.54   |
| Positive Behavior Support                               | 1 positive behavior support plan | \$665.00 |
| Residential Level I (4 to 8 residents)                  | 24 hours                         | \$130.35 |
| Residential Level I (3 or less residents)               | 24 hours                         | \$172.46 |
| Residential -Technology Assisted                        | 24 hours                         | \$79.00  |
| Residential Level II -12 or more hours of supervision   | 24 hours                         | \$141.69 |
| Residential Level II-fewer than 12 hours of supervision | 24 hours                         | \$79.00  |
| Respite   | 15 minutes                       | \$2.77   |
| Speech therapy  | 15 minutes                       | \$22.17  |
| Supported Employment                                    | 15 minutes                       | \$10.25  |

- 1 (3) Any combination of a day training service, a community access service, personal
- 2 assistance, supported employment, and a participant's hours of employment shall not

1 exceed sixteen (16) hours per day.

2 (4) Community access services shall not exceed 160 units per week.

3 (5) Community guide services shall not exceed 576 units per one (1) year authorized  
4 POC period.

5 (6) Community transition shall be based on prior authorized cost not to exceed  
6 \$2,000 per approved transition.

7 (7) Consultative clinical and therapeutic services shall not exceed 160 units per one  
8 (1) year authorized POC period.

9 (8) Day training and supported employment alone or in combination shall not exceed  
10 160 units per week.

11 (9) Environmental accessibility shall be:

12 (a) Based on a prior authorized, estimated cost; and

13 (b) Limited to an \$8,000 lifetime maximum.

14 (10) Goods and services shall not exceed \$1,800 per one (1) year authorized POC  
15 period.

16 (11) Natural support training shall be based on a prior authorized, estimated cost not  
17 to exceed \$1,000 per one (1) year authorized POC period.

18 (12) Person centered coaching shall not exceed 1,320 units per year.

19 (13) Physical therapy and physical therapy by a physical therapy assistant shall in  
20 combination not exceed fifty-two (52) units per month.

21 (14) Occupational therapy and occupational therapy by an occupational therapy as-  
22 sistant shall in combination not exceed fifty-two (52) units per month.

23 (15) Respite shall be limited to 3,320 units (830 hours) per one (1) year authorized



1 POC period.

2 (16) Shared living shall be based on a prior authorized amount not to exceed \$600  
3 per month.

4 (17) Speech therapy shall not exceed fifty-two (52) units per month.

5 (18) A vehicle adaptation shall be limited to \$6,000 per five (5) years per participant.

6 (19) Transportation shall be reimbursed:

7 (a)1. If provided as a participant directed service:

8 a. Based on the mileage; and

9 b. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d), if provided  
10 by an individual. The rate shall be adjusted quarterly in accordance with 200 KAR  
11 2:006, Section 8(2)(d); or

12 2. If provided by a public transportation service provider, at the cost per trip as doc-  
13 umented by the receipt for the specific trip; and

14 (b) A maximum of \$265 per calendar month.

15 (20) An estimate for a supply item requested under specialized medical equipment or  
16 goods and services shall be based on the actual price to be charged to the provider,  
17 participant, or individual by a retailer or manufacturer.

18 (21) Specialized medical equipment or goods and services shall not include equip-  
19 ment and supplies covered under the Kentucky Medicaid program's state plan includ-  
20 ing:

21 (a) Durable medical equipment;

22 (b) Early and Periodic Screening, Diagnosis, and Treatment Services;

23 (c) Orthotics and prosthetics; or

1 (d) Hearing services.

2 (22) A participant shall not receive multiple SCL services during the same segment  
3 of time except in the case of the following collateral services that shall be allowed to  
4 overlap other SCL services:

5 (a) Community guide services;

6 (b) Consultative clinical and therapeutic services; or

7 (c) Person centered coaching.

8 Section 4. Exceptional Supports. (1) A service listed in subsection (2) or (3) of this  
9 section, regardless of delivery method, shall qualify as an exceptional support:

10 (a) Based on the needs of the participant for whom the exceptional support is re-  
11 quested;

12 (b) For a limited period of time not to exceed a full POC year;

13 (c) If the service meets the requirements for an exceptional support in accordance  
14 with the Kentucky Exceptional Supports Protocol; and

15 (d) If approved by DBHDID to be an exceptional support.

16 (2)(a) The following shall qualify as an exceptional support and be reimbursed at a  
17 rate higher than the upper payment limit established in Section 3 of this administrative  
18 regulation if meeting the criteria established in subsection (1) of this section:

19 1. Community access services;

20 2. Day training that is not provided in an adult day health care center;

21 3. Personal assistance;

22 4. Respite;

23 5. Residential Level I – three (3) or fewer residents;

1       6. Residential Level I - four (4) to eight (8) residents; or

2       7. Residential Level II – twelve (12) or more hours.

3       (b) A rate increase for a service authorized as an exceptional support shall:

4       1. Be based on the actual cost of providing the service; and

5       2. Not exceed twice the upper payment limit established for the service in Section 3  
6 of this administrative regulation.

7       (3) The following shall qualify as an exceptional support and be provided in excess of  
8 the unit limits established in Section 3 of this administrative regulation if meeting the cri-  
9 teria established in subsection (1) of this section:

10      1. Consultative clinical and therapeutic services;

11      2. Person centered coaching;

12      3. Personal assistance; or

13      4. Respite.

14      (4) A service that qualifies as an exceptional support shall:

15      (a)1. Be authorized to be reimbursed at a rate higher than the upper payment limit  
16 established for the service in Section 3 of this administrative regulation; or

17      2. Be authorized to be provided in excess of the unit limit established for the service  
18 in Section 3 of this administrative regulation; and

19      (b) Not be authorized to be reimbursed at a higher rate than the upper payment limit  
20 and in excess of the service limit established for the service in Section 3 of this adminis-  
21 trative regulation.

22      Section 5. Allocation. A participant shall be designated an allocated amount of fund-  
23 ing to cover SCL waiver expenses for the participant's POC period based on assess-

1 ment of the participant's needs performed by DBHDID.

2 Section 6. Participant Directed Services. (1) A reimbursement rate for a participant  
3 directed service shall:

4 (a) Not exceed the upper payment limit established for the service in Section 3 of this  
5 administrative regulation unless the service qualifies as an exceptional support in ac-  
6 cordance with Section 4(2)(a) of this administrative regulation; and

7 (b) Include:

8 1. All applicable local, state, and federal withholdings; and

9 2. Any applicable employment related administrative costs which shall be the re-  
10 sponsibility of the participant who is directing the service.

11 (2) An employee who provides a participant directed service shall not be approved to  
12 provide more than forty (40) hours of service per week unless authorized to do so by  
13 the department.

14 (3) A legally responsible individual or immediate family member shall not be author-  
15 ized to be reimbursed for more than forty (40) hours of participant directed services per  
16 week.

17 Section 7. Auditing and Reporting. An SCL provider shall maintain fiscal records and  
18 incident reports in accordance with the requirements established in 907 KAR 12:010.

19 Section 8. Appeal Rights. A provider may appeal a department decision regarding  
20 the application of this administrative regulation in accordance with 907 KAR 1:671.

21 Section 9. Incorporation by Reference. (1) The "Kentucky Exceptional Supports Pro-  
22 tocol", November 2012 edition, is incorporated by reference.

23 (2) This material may be inspected, copied, or obtained, subject to applicable copy-

1 right law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,  
2 Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (39 Ky.R. 716; 1266;  
3 1457; eff. 2-1-2013.)

907 KAR 12:020E

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lawrence Kissner, Commissioner  
Department for Medicaid Services

APPROVED:

\_\_\_\_\_  
Date

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Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services

907 KAR 12:020E

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on March 21, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing March 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until March 31, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 12:020E  
Cabinet for Health and Family Services  
Department for Medicaid Services  
Agency Contact: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding Supports for Community Living (SCL) waiver program services. The SCL waiver program is a program which enables individuals who have care needs that qualify them for receiving services in an intermediate care facility for individuals with an intellectual disability (ICF IID) to reside in and receive services in a community setting rather than in an institutional setting.
  - (b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding SCL waiver program services.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding SCL waiver program services.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's reimbursement provisions and requirements regarding SCL waiver program services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: The amendment delays a reimbursement reduction for day training until July 1, 2014.
  - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure the safe and effective transition of enhanced services to enable individuals with an intellectual or developmental disability to live within the least restrictive environment as possible. This regulation will allow providers who are in the process of pursuing increased credentials to continue to serve these individuals in a congregate setting. This administrative regulation is being implemented on an emergency basis in order to maintain the necessary rate structure for day training services for the safety of individuals receiving these services while new and more individualized services are developed and delivered.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring the safe and effective transition of enhanced services to enable individuals with an



intellectual or developmental disability to live within the least restrictive environment as possible.

- (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring the safe and effective transition of enhanced services to enable individuals with an intellectual or developmental disability to live within the least restrictive environment as possible.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently 224 SCL providers participating in the SCL waiver program with 137 of those having provided day training services at any point in time since July 2013. There are currently 4,125 individuals receiving services in the SCL waiver program and typically at least ninety (90) percent receive day training services.
  - (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
    - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment mandates no action.
    - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment imposes no cost.
    - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers of day training will benefit by continuing to be reimbursed for day training at the current level longer than initially anticipated which will enable a better transition period (from day training to supported employment services) for SCL waiver program participants who transition to supported employment services.
  - (5) Provide an estimate of how much it will cost to implement this administrative regulation:
    - (a) Initially: The amendment is not expected to elevate Medicaid program costs.
    - (b) On a continuing basis: This action has no continuing costs as it will not be in effect beyond June 30, 2014.
  - (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.
  - (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied as the amendment applies equally to all regulated entities/individuals.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 12:020E

Agency Contact Person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not anticipated to generate a higher level of revenues for state or local government.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response in (a) above also applies here.
  - (c) How much will it cost to administer this program for the first year? The amendment is not expected to elevate Medicaid program costs.
  - (d) How much will it cost to administer this program for subsequent years? This action has no continuing costs as it will not be in effect beyond June 30, 2014.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: